

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

DANIEL HORACEK,

Plaintiff,

Case No. 08-10866

Hon. Marianne O. Battani

v.

Magistrate Judge Paul Komives

LORI SEAMAN, LT. ATKINS, CAPT.  
HENRY WALLACE, SHERIFF  
MICHAEL BOUCHARD, JANE DOE/  
JOHN DOE, Oakland County Jail  
Librarians, and JANE DOE/JOHN  
DOE, Oakland County Jail Deputies,

Defendants.

---

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION  
AND GRANTING IN PART AND DENYING IN PARTY DEFENDANTS' MOTION  
FOR SUMMARY JUDGMENT AND GRANTING IN PART AND DENYING  
IN PART PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT**

Plaintiff Daniel Horacek filed this action alleging that his civil rights had been violated, which the Court referred to Magistrate Judge Paul Komives for all pretrial proceedings. See Doc. No. 12. Defendants Lori Seaman, Lt. Atkins, Henry Wallace, and Sheriff Michael Bouchard subsequently filed a Motion for Summary Judgment. Before Plaintiff filed his response, he filed a Motion for Leave to Amend Complaint.

In a Report and Recommendation ("R&R") dated August 20, 2009, Magistrate Judge Komives recommended that the both motions be granted in part and denied in part. See Doc. No. 32. Under 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2), a party seeking review of a magistrate judge's report and recommendation is required to act within ten days

of service of the R&R. Magistrate Judge Komives informed the parties that a failure to file objections waives any further right of appeal. See R&R at 28. Neither party filed an objection. Because no objection has been filed in this case, the parties waived their right to appeal.

The Court finds the R&R accurately articulates the law and presents a well-reasoned, persuasive analysis of the application of governing law to the facts of this case, and the Court **ADOPTS** the Report and Recommendation. Accordingly, Defendants' Motion for Summary Judgment is **GRANTED in part and DENIED in part**. Specifically, Plaintiff has failed to state a claim against Atkins, Wallace, and Bouchard inasmuch as they had no personal involvement in the facts giving rise to Plaintiff's claims. Seaman likewise is entitled to summary judgment as to Plaintiff's claim that his legal mail was improperly handled because Horacek has failed to show she was personally involved in opening his legal mail. Further, all Defendants are entitled to summary judgment as to Plaintiff's claims that he was denied access to the court and that his telephone calls were monitored because Plaintiff has failed to establish the existence of a genuine issue of material fact relative to these claims.

Plaintiffs Motion for Leave to Amend also is **GRANTED in part and DENIED in part**. Specifically, Plaintiff may add as Defendants, Aaron Alley and Carol Wilkerson, to his claim that his legal mail was opened outside his presence, provided it accrued after January 21, 2006.

**IT IS SO ORDERED.**

s/Marianne O. Battani  
MARIANNE O. BATTANI  
UNITED STATES DISTRICT JUDGE

DATE: September 10, 2009

**CERTIFICATE OF SERVICE**

Copies of this Order were mailed and/or e-filed to Plaintiff and counsel of record on this date.

s/Bernadette M. Thebolt  
Deputy Clerk